EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI		X		
2	DDCI		X		
3	EXDIR		X		
4	D/ICS				
5	DDI				
6	DDA		X		
7	DDO		X		
8	DDS&T				
9	Chm/NIC				
10	GC		X		
11	IG				
12	Compt				
13	D/Pers				
14	D/OLL	X			
15	D/PAO				
16	SA/IA				
17	AO/DCI				
18	C/IPD/OIS		X		
19					
20					
21					
22					

STAT

SUSPENSE ____________
Date

Remarks Neither Exec Registry nor OLL received the referenced SSCI, 13 Sep 84, letter.

STAT

Executive Secretary
24 Sep 84
Date

3637 (10-81)

THE ATTORNEY GENERAL

September 21, 1984

Bill -

For your information.

Bill

Office of the Attorney General
Washington, D.C. 20530

Executive Registry
84-9095

Honorable Barry Goldwater
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Barry:

This is in reference to your September 13, 1984 letter in which you expressed your concern over the Department of Justice's position on the CIA Freedom of Information relief legislation, H.R. 5164. After a careful analysis and discussion, and solely based on what the CIA might gain if H.R. 5164 is enacted, we support passage of that legislation. As a result of our willingness to accommodate the CIA's singular interests in this matter, other Departments -- including Defense and Treasury -- dropped their opposition to H.R. 5164, and the Administration notified the House of Representatives of our position.

I do, however, believe that you should understand the importance of the law enforcement concerns we have forgone in order to support, instead, the position urged by you and Director Casey. Having forgone something of importance to me as chief law enforcement officer, I urge you to broaden your own perspective and understand those important goals. It is especially important for you to understand because of your strong reputation as a supporter of law enforcement, as well as intelligence.

As you correctly noted, our previous position on H.R. 5164 was based upon the Privacy Act amendment added by the House Committee on Government Operations. That amendment to the Privacy Act of 1974 would preclude agencies from taking the position that records exempted from first-person access under the provisions of the Privacy Act also need not be disclosed under the Freedom of Information Act, pursuant to exemption (b)(3) of the FOIA. The passage of this amendment would render the exemptions of the Privacy Act essentially meaningless with respect to an individuals's access to his own law enforcement records. Thus, even though a person's request for information about himself from a law enforcement agency could be denied under the Privacy Act, that agency might nevertheless be required upon passage of this amendment to disclose the same information under the FOIA.

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The Department of Justice, after exhaustive research and analysis, reversed the earlier construction of the Privacy Act on this issue in early 1982 and concluded, as have a number of courts, including the 5th and 7th Circuits, that agencies should be able to withhold from requesters the criminal law enforcement records relating to themselves that are properly exempted from access under the Privacy Act. Contrary to the information that you received, OMB first endorsed this position in early 1982.

Barry, this is not an insignificant matter. It is a most important law enforcement concern, something which I believe deserves your careful consideration. Fifteen percent of the FOIA requests the FBI receives and 58 percent of the FOIA requests the DEA receives are from prisoners. Another 21 percent of the FOIA requests that DEA receives are from known drug traffickers. These requests help requesters to find out who cooperated with law enforcment authorities, and how much those authorities know. In the course of the hearings held during this Congress on S. 774, the Department provided to the Senate Judiciary Committee a list of over 200 documented cases where the FOIA had a harmful impact on law enforcement activities. Moreover, in an earlier executive session of the Senate Subcommittee, FBI Director Webster provided additional examples of the use of the FOIA by criminals, terrorist groups, and hostile foreign intelligence agencies.

Although the Department of Justice has pledged to support H.R. 5164, we still remain firm in our conviction that the Privacy Act amendment will be harmful to law enforcement efforts in the fight against crime.

Sincerely,

Bill

William French Smith
Attorney General